

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:13-CV-327-FL

GERBER LIFE INSURANCE)
COMPANY,)
)
Plaintiff,)
)
v.)
)
LATONYA W. MONTGOMERY-)
CAUDLE and TERRANCE MASON,)
)
Defendants.)

ORDER

This interpleader action was initiated by complaint filed May 6, 2013, with amended complaint following May 7, 2013. Defendant LaTonya Montgomery-Caudle was served pursuant to affidavit of service (DE 10) with responsive pleading due by June 3, 2013. No response was made. Plaintiff moved for entry of default against her July 22, 2013 (DE 17), which request the clerk granted August 21, 2013 (DE 26).

With regard to defendant Terrance Mason, plaintiff's efforts at serving him failed and plaintiff sought leave to serve this defendant by publication, which motion the court allowed June 17, 2013. On July 15, 2013, plaintiff filed an affidavit of service confirming that notice by publication ran June 22, June 29, and July 6, 2013. No response timely was made, and as to this defendant plaintiff filed August 20, 2013, request for entry of default (DE 23). Any response to that request would be due by September 13, 2013.

Plaintiff has also filed a motion to deposit the proceeds at issue into the clerk's registry (DE

19). With no response having been received, that motion has been submitted for consideration. There is also pending plaintiff's motion for exemption from participation in Rule 26(f) conference and initial disclosure (DE 25). While the time for any response has not yet run on that motion, in light of the procedural status of the case, the court finds good cause now to allow that motion.

Upon expiration of the time to make any response to the request for entry of default now pending, the court will take up and decide that request in tandem with plaintiff's motion to deposit funds (DE 19), where it could appear that plaintiff then would also be entitled to a dismissal from the action involving address of the proceeds of the insurance policy which has multiple and adverse claimants named as defendants herein.

Plaintiff desires to tender the proceeds of the policy at issue, plus applicable interest, in the amount of \$7,659.66, into the registry of this court, pursuant to Federal Rule of Civil Procedure 67 and Local Rule 67.1, and to have the clerk place the registry funds into an interest bearing account.

The clerk shall re-refer to the undersigned the motion to deposit, together with the request for entry of default, when the latter ripens. If there is any cause known to plaintiff why, in the event of default being made also against defendant Terrance Mason, why it should not then be dismissed upon allowance of the motion to deposit proceeds, plaintiff shall show that cause in filing due by September 13, 2013. If no cause is known, no further response by plaintiff need be made.

SO ORDERED, this the 28th day of August, 2013.

A handwritten signature in black ink, reading "Louise W. Flanagan". The signature is written in a cursive style with a large initial "L".

LOUISE W. FLANAGAN
United States District Judge